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ABSTRACT

In October 1988, 48 suburban and greater Minnesota school districts, representing approximately 20 percent of the state's public elementary and secondary school students, filed a lawsuit claiming that Minnesota's school financing system violates the state's constitutional mandate for equality of educational opportunity. (A ruling in the case is not expected until the 1991 Legislature adjourns.) The state asserts that neither the state constitution nor state statutes require equal revenues per pupil and that the state has met its specific obligations under the state education clause. After explaining the lawsuit, this report discusses states' duty to maintain public schools and reviews Minnesota's school finance system. Next is a history of state school finance litigation that highlights early cases ("Serrano v. Priest," "Van Dusartz v. Hatfield," and "San Antonio Independent School District v. Rodriguez"), equity versus adequacy emphases in the 1980s, and recent challenges to states' school finance systems, including cases upholding a state's system (Georgia, Colorado, New York, Maryland, and Michigan) and cases invalidating a state's system (Montana, Kentucky, Texas, and New Jersey). None of these cases provides a basis for predicting the outcome of Minnesota's school finance lawsuit. (MLH)

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State School Finance Litigation

A Background Paper

December 1990

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State School Finance Litigation

A Background Paper

December 1990

This report discusses states' duty to maintain a system of public schools, Minnesota's school finance system, and school finance litigation history.

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The Minnesota School Districts' Lawsuit

In October 1988, 48 suburban and greater Minnesota school districts, representing approximately one-fifth of the state's public elementary and secondary school students, filed a lawsuit claiming that Minnesota's school financing system violates the state's constitutional mandate for equality of educational opportunity. A ruling in the case is not expected until after the 1991 Legislature adjourns.

The plaintiff school districts are asking Minnesota courts to determine the substantive reach of the education article contained in the state constitution, which provides for a "general and uniform" and "thorough and efficient" system of public schools. The plaintiffs claim that the state's education article requires the referendum levy, the debt service levy, and districts' receipt of supplemental revenue to be enjoined and that the state use state funds to equalize expenditures on a per pupil basis, taking into account those factors that increase the costs of operating an education program.

The state asserts that neither the state constitution nor state statutes require equal revenues per pupil or equal revenue per pupil for the same tax effort and that the state has met its specific obligations under the state education clause. A court decision sustaining plaintiffs' claims could have a significant impact on the structure of the state's education finance system and on the Legislature's ability to make decisions affecting the system.

States' Duty to Maintain Public Schools

The constitutions of 48 states explicitly recognize an affirmative duty of government to educate the state's citizens.

In fulfilling their constitutional duty to educate, state governments have accepted the practical responsibilities of funding a statewide system of public schools. Today, state and local governments provide approximately 90 percent of the financial support for public elementary and secondary education; the federal government provides the remaining six to 10 percent. Over the past half-century, state funding of education has increased from 30 percent of total education costs to 50 percent, while local funding of education has decreased from 70 percent to a little more than 40 percent.

State funding for education usually comprises between 33 and 50 percent of a state's budget, making it the single largest budget item.

Minnesota's School Finance System

Minnesota's constitution requires the state legislature to establish a statewide system of public schools. Article 13, section 1, states:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Chapters 121, 122, 124, 124A, 275 and 475 of Minnesota Statutes contain laws governing the school financing system.

Minnesota's public school system relies upon three principal sources of revenue for funding districts' education programs: state aid from the general fund; revenue from local property taxes; and local long term debt reflected in local bond issues.

Minnesota's major school financing plan is called the general education aid program and is described in chapter 124A. The program is composed of the basic general education formula and the referendum levy. The program is funded through state and local tax dollars. Each year, the Legislature determines the general education formula and establishes a minimum levy.[1]

The formula allowance, which is the primary source of education funding, provides districts a guaranteed level of state funding per "pupil unit" to cover operating expenditures. The formula allowance compensates districts for factors that increase the costs of operating an education program: small and isolated rural schools (sparsity revenue); high staff training and operating costs (training and experience revenue); high concentrations of students from families receiving AFDC payments (compensatory revenue); and the number of secondary students (pupil unit weighting).

The minimum levy is the amount each district must tax its residents in order to receive the state's guaranteed allowance. Supplemental revenue ensures districts a minimum annual increase in the amount of revenue available from one school year to the next. The referendum levy allows school districts to raise additional revenue for their general fund through local property taxes approved by district voters. Revenue raised by the referendum levy is retained by the local levying district.

Plaintiff school districts claim the practical effect of the referendum levy, and the debt service levy used by local districts to finance the construction of buildings and facilities, is to make per pupil spending a function of district wealth. Plaintiffs allege they are entitled to be treated on a uniform basis with high wealth districts; disparate revenue and disparate educational opportunity resulting from disparate property wealth violate state equal protection guarantees.

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[1]See **Minnesota School Finance, A Guide for Legislators**, House Research Department, February 1990, for a detailed reference on the method by which funds are provided for the operation of public elementary and secondary schools.

The state argues the state constitution does not require equalized revenues and in the absence of any constitutional prohibition, all matters affecting the governing and administering of public schools, including how they are financed, are matters for the Legislature.

Some observers are uncertain whether plaintiffs' ultimate goal is to achieve equalized per pupil spending or equal educational opportunities. These individuals surmise that plaintiffs might accept a school finance system that gives property poor school districts the same ability to finance as much per pupil spending as wealthier districts through similar tax levies. If the state were to match the spending of wealthy districts under this system, the state would have to increase the amount of state aid to property poor and less wealthy districts.

A History of State School Finance Litigation

Since the late 1960's, state and federal courts have been asked to decide whether state methods of financing public education fail to provide equal educational opportunity for all citizens.

Virtually all states share a common feature associated with the financing of their public schools: a disparity in local taxable wealth among school districts. Advocates of school finance reform argue that relying upon local property taxes to support a portion of the total public school budget causes significant disparity among school districts in the quality and availability of educational opportunities. They claim that differences in per student revenue and in local tax rates produce a school finance system that treats students and taxpayers in property poor districts differently from those in wealthier districts. They maintain that fiscal disparities and educational deprivations violate constitutional equal protection guarantees or state statutory or constitutional provisions governing education.

An equal protection case arises when a government's action makes a distinction between groups of people based upon a group's characteristics.

Courts use one of two legal standards to decide whether the distinction, or "classification", is constitutionally permissible: a "compelling state interest" standard that triggers strict judicial scrutiny and places a heavy burden on a government to justify a classification; and a "rational basis" standard that places a lesser burden on a government. Courts apply a "compelling state interest" standard of review when a government denies a group a fundamental right, such as freedom of expression, the right to travel or the right to vote, or distinguishes between groups based on a suspect classification of race, gender or ancestry. Other classifications are judged according to a less stringent standard of whether or not a classification is rationally related to a legitimate government interest. Sometimes courts recognize a third, "intermediate" level of scrutiny under which a government's burden to justify a classification is greater than the "rational basis" standard but lesser than the "compelling state interest" standard. Some advocates of education reform argue that classifications affecting the receipt of educational benefits should be subject to intermediate scrutiny.

Early Cases

The 1971 California Supreme Court decision in Serrano v. Priest developed the basis for challenging a state's equal protection clause in education finance cases.

California's highest state court ruled that the state public school financing system violated the state constitution because it heavily relied upon unequal revenues from local property taxes to fund public elementary and secondary schools, resulting in substantial disparities among school districts in the quality of education. The court established a standard of fiscal neutrality that required the state to base the quality of a child's education on the wealth of the state as a whole rather than the wealth of a local school district. In its opinion, the court declared that wealth was a suspect classification and that discrimination based on wealth affected a fundamental interest in education. The court reasoned that because a suspect classification and a fundamental interest were involved, the state had to justify its school finance system by showing a compelling state interest, a burden of proof the court determined the state had not met. Litigants soon subjected school finance plans in other states to a legal attack similar to that used in Serrano.

In Van Dusartz v. Hatfield, a Minnesota case brought before a federal district court in 1971, plaintiffs argued that the wealth-based disparities inherent in Minnesota's school financing system violated the federal equal protection clause.

The federal court agreed, adopting the reasoning of the Serrano court. The 1971 Minnesota Legislature made two major changes in the state's school finance system to address wealth-based disparities in education funding noted by the court: the state's share of the cost of education was increased, making state taxes the primary source of education funding; and wealth-based disparities were reduced by increasing the foundation aid formula allowance and limiting local property levies. In 1973 the U. S. Supreme Court overruled the Van Dusartz decision in San Antonio Independent School District v. Rodriguez.

The U.S. Supreme Court's decision in San Antonio Independent School District v. Rodriguez (1973) eliminated the federal courts as a forum for school finance litigation.

In a five to four decision, the Court ruled that Texas's system of allocating state aid, which relied heavily on local property taxes for funding of local schools, did not violate the rights of a suspect class of poor persons living in property poor school districts. Although wealthy school districts raised more revenue for local schools at lower tax rates and spent much more per capita on education, the Court found that the state provided an "adequate" education to all children and encouraged local control; the Court regarded maintaining local control a legitimate state purpose. The Court held that education was not a fundamental interest under the U.S. Constitution and, consequently, did not require a strict scrutiny analysis under the federal equal protection clause. The Court's decision made school finance reform a state question.

Just one month after Rodriguez, the New Jersey Supreme Court became the second state supreme court to find a state school finance system unconstitutional. Plaintiffs in Robinson v. Cahill used the same arguments that prevailed in the California Supreme Court in Serrano, asserting that a correlation existed between money and educational opportunity.

Although the court was reluctant to base the case on the state's equal protection clause, it concluded that "the quality of educational opportunity does depend in substantial measure upon the number of dollars invested, notwithstanding that the impact upon students may be unequal because of other factors."

The plaintiffs in Robinson also alleged that the state's school finance system violated the state's education article by failing to provide a "thorough and efficient" system of education.

The court determined that disparities in per pupil expenditures were related to the wealth of school districts, which interfered with the state's ability to ensure that pupils received the educational services they needed as required by the state's education clause. The court ruled that the education article compelled the state to provide educational opportunity that would equip children to serve as citizens and to compete in the labor market. The court found that the state had not met its constitutional obligation because of the fiscal disparities among school districts, a measure the court found "plainly relevant." The Robinson decision prompted suits in other states based upon state equal protection clauses and words in state education clauses such as "thorough and efficient," "adequate," "general and suitable," or "ample" that defined states' responsibilities in providing educational services. Some reform-minded advocates suggested that the Robinson decision required New Jersey to allocate education resources in such a way as to equalize pupil performance at some minimum level.

Equity Versus Adequacy

Serrano and Robinson and the cases that followed during the next 15 years helped develop the concepts of equity and adequacy in education.

The cases affected the development of equity and adequacy in two ways. First, a number of state courts concluded that the state's education clause did not provide operational definitions of the words in the clause and did not lend itself to judicially manageable standards by which to determine students' needs or the costs of delivering services. Some courts deferred to the education schemes the state legislatures adopted in response to the state education clause. Other courts sustained equal protection or education article claims by elaborating only general constitutional principles and leaving to legislatures a fuller implementation of judicially announced principles. Second, a number of state courts concluded that their state's equal protection clause did not impose an affirmative duty upon the state to provide students with an assured quality education. The clause only required that a state, once it determined the quality of education to provide, offer that level of quality education to all children.

State legislatures responded to state school finance cases by gradually changing the concept of equity; they replaced flat grant systems with systems that recognized districts' need for "disequalization funds" to compensate for factors that increased districts' costs. As state funding increased and district inequities became more pronounced, judicial mandates focused more on ensuring adequacy in educational opportunities rather than equity among districts in resource distribution. Today states are divided over whether equal educational opportunity requires

absolute equality in per pupil spending. A few states are attempting to define equal educational opportunity in terms of pupils' achievement of specific performance goals.

Recent Cases

Court challenges to a state's school finance system are based on the legal principle of equal protection, a state's education article, or both.

Plaintiffs in school finance cases often claim that a state legislature has failed to fulfill its constitutional duty to educate its citizens by allowing disparate and low levels of funding among local school districts. The claims are of two types: that a state has a specific constitutional obligation to provide a certain quantum of education; and, given the importance that a state constitution places on education, a state school finance system that results in fiscal disparities among districts should be subjected to strict scrutiny under equal protection analysis. Some claims involve broad concepts such as "equal opportunity", and broad language such as "thorough and efficient." Some claims deal with specific problems such as the needs of disabled pupils, pupils from low income families or pupils with limited English proficiency, and the needs of school districts contending with extraordinary burdens that prevent them from providing equal educational opportunities without additional state support. Other claims examine particular aspects of school finance formulas such as the way school district fiscal capacity is measured, the extent of state support for capital outlay and debt service expenditures, and the method for recapturing excess funds raised by local districts.

Most state courts, when confronted with school finance litigation, adopt the U.S. Supreme Court's equal protection analysis in Rodriguez that asks about the nature of the state classification and the nature of the benefits or burdens involved, but apply the analysis in the context of the rights and interests guaranteed by their respective state constitutions. (Although federal and state equal protection clauses are very similar, state courts are free to interpret state equal protection clauses differently from the federal clause.) Generally, the level of scrutiny a court employs to decide whether a state's school finance law is constitutionally permissible determines the outcome of a case: when courts apply a "strict scrutiny" standard of review the state school finance system is struck down; when courts use a "rational basis" standard of review the school finance system is upheld. When the language of a state's education clause is the basis of a challenge, there has been little similarity and little predictability in the nature of courts' rulings, even when the language in contention is essentially similar.

Cases Upholding a State's School Finance System

A state court's determination of whether education is a fundamental right is of major importance. When a court rules that education is not a fundamental right, no equal protection claim is likely to prevail. A court usually can not find in the language of the state's education clause a requirement of equality in the distribution of or access to educational resources to counteract a ruling that education is not a fundamental right.

Courts in at least fourteen states, including Georgia, Colorado, New York, Maryland, and Michigan, have found a school finance system constitutional under the less strict, rational basis standard of review.

Georgia 1981

In McDaniels v. Thomas (1981), plaintiffs claimed that Georgia's school finance system violated the state's equal protection clause and deprived children of an adequate education.

Discussion

The Georgia Supreme Court defined the constitutional phrase "adequate education" as requiring the state to provide basic educational opportunity to children. The court rejected plaintiffs' contention that the state's equal protection provision imposed an additional obligation on the state to equalize educational opportunities between districts. The court ruled that the finance system bore a rational relationship to a legitimate state purpose.

Colorado 1982

In Lujan v. Colorado State Board of Education (1982), the Colorado Supreme Court explored two issues in reaching its decision: whether the state's school finance system denied plaintiffs a fundamental right or disadvantageously affected a suspect class of poor students and thereby violated the state's equal protection clause; and whether the finance system satisfied the state's constitutional requirement to provide a "thorough and uniform" system of public schools.

Discussion

The court found the state finance system constitutionally permissible on both issues. The court held that the education article merely mandated action by the legislature to establish schools, but did not require it to establish a centralized school system necessitating equal expenditures per pupil or equal services and facilities throughout the state. The court stated that the decision as to the "best public policy" was a matter for the legislature to decide and that judicial interference in formulating policy should be avoided.

New York 1982

In Board of Education, Levittown, Etc. v. Nyquist (1982), the lower courts used an intermediate standard of review they called the "sliding scale" test.

Discussion

The test required that the challenged law serve "important" government objectives and substantially further their achievement. The New York Court of Appeals found the intermediate standard inappropriate and used the rational basis standard of review to determine that the state school finance system did not violate either federal or state equal protection provisions or the state's mandate to provide for the maintenance and support of public schools. The court cited the Rodriguez decision as support for using a rational basis test. The court noted the strong emphasis the state placed on local control and concluded that the legislative minimum for basic education was being met in all districts. In addressing the claim that "metropolitan overburden" and the lack of additional state funds prevented cities from providing equal educational opportunities, the court ruled that existing inequalities were "the product of demographic, economic and political factors intrinsic to the cities themselves" and not attributable to legislative decisions.

Maryland 1983

In Hornbeck v. Somerset County Board of Education the Maryland Court of Appeals held that the state's education clause did not mandate exactly equal per pupil funding and expenditures among districts and the school finance system did not violate the federal or state equal protection clause.

Discussion

The court concluded that although wealthy districts had available more funds for education than property poor districts, all pupils were able to receive an adequate education. In its ruling, the court stated that the "thorough and efficient" clause did not require "mathematical uniformity" so long as the state made efforts to minimize "the impact of undeniable and inevitable demographic and environmental disadvantages of any given child."

Michigan 1984

In East Jackson Public Schools v. State of Michigan, plaintiffs claimed that the state's failure to provide equal per pupil funding in each school district throughout the state violated the state constitution.

Discussion

The Michigan Court of Appeals held that the legislative mandate to establish a system of free public education did not require equal per pupil funding for all districts.

Cases Invalidating a State's School Finance System

In the last two years the supreme courts of Montana, Kentucky, Texas and New Jersey have struck down their states' school finance systems, ruling that district disparities in education funding, principally the result of differences in the value of taxable property, are unconstitutional. In the most sweeping decision, the Kentucky court went beyond the relief sought by the plaintiffs and declared the state's finance system and school system unconstitutional.

Montana 1989

Plaintiffs in Helena Elementary School District No. 1 v. Montana alleged that the state school finance system violated a provision in the state constitution guaranteeing "equality of educational opportunity. . .to each person of the state."

Discussion

In 1950, the state provided over 81 percent of school districts' general fund revenues. Gradually, districts that could afford to do so increased local property taxes to generate additional funds for the district. The percent of revenues the state provided to districts declined. By the 1985-1986 school year, 35 percent of districts' general fund revenues came from local property taxes; wealthy districts were spending more per pupil than poorer districts. The state supreme court ruled that differences among districts in money spent per pupil created unequal educational opportunities in violation of the state's education clause. The court based its decision at least in part on the fact that wealthier districts had more programs, equipment and supplies. The court directed the legislature to devise a more equal plan, noting that state fiscal problems did not justify continued inequality in educational opportunities.

Kentucky 1989

Plaintiffs in Rose v. Council for Better Education alleged that the state school finance system violated a constitutional mandate to "provide for an efficient system of common schools throughout the state."

Discussion

The state supreme court declared all the state's school laws, school districts, school boards, and school programs unconstitutional based on disparities in districts' per pupil expenditures and pupils' poor educational performance as compared to accepted national standards. Under the state's school finance system, the state provided 66 percent of total school funds, local sources provided 23 percent, and the federal government provided 11 percent. Districts' assessed valuation per student varied from a low of $36,000 per student to a high of $300,000 per student. The school finance system did not require a minimum contribution by each district. As a result, disparities in per pupil

Kentucky Discussion continued

expenditures ran into thousands of dollars per year and led to disparities in teacher pay, availability of basic educational materials, student-teacher ratios, curriculum, school management, and size and condition of school buildings. Evidence showed a correlation between test scores and wealth and between the amount of per pupil spending and the quality of education received. The court stated that the legislature fell short of the constitutional mandate to provide "an adequate, equal and substantially uniform educational system." The court ruled it incumbent upon the legislature to provide an efficient system of common schools that included adequate funding.

Texas Case

Plaintiffs in Edgewood Independent School District v. Kirby alleged that the state school finance system violated the constitutional mandate requiring an efficient system of public schools.

Discussion

The court ruled that the state's efficiency clause required equal revenues from equal tax efforts, that children in all districts have substantially equal access to funds, and that when a burden is constitutionally imposed, the state can not delegate its responsibility to local school districts to provide "an efficient system of public free schools throughout the state." The court found that a wealth ratio of 700:1 governed educational opportunity and that the state's equalized foundation program failed to even cover the costs of mandated programs. Property poor districts taxed themselves at significantly higher rates in order to meet minimum requirements for accreditation and yet their education programs were generally inferior. Evidence showed that the amount of money spent on a pupil's education had a significant impact on the educational opportunities available to that pupil. The court directed the legislature to substantially equalize educational opportunity.

New Jersey 1990

Plaintiffs in Abbott v. Burke alleged that the state school finance system violated the constitutional mandate requiring a "thorough and efficient" system of education. Unlike the cases in Kentucky and Texas where the primary beneficiaries of the litigation were white and minority children living in poor rural areas, the primary beneficiaries in the New Jersey case were minority children living in poor urban areas such as Camden and Newark.

Discussion

The state supreme court found significant disparities in assessed property values and in per pupil spending among the state's approximately 600 school districts. The state exacerbated the disparities by providing, on average, 80 percent funding of the state share of the formula allowance. The court determined that the education clause required the state to provide substantially equal spending on a per pupil basis. While conceding that money alone would not improve educational results, the court observed that education research "does not show that money makes no difference." The court required the state to give property poor districts the ability to finance as much per pupil spending as wealthy districts through similar tax levies. The court directive requires the legislature to significantly increase state aid to less affluent school districts by 1992.

Minnesota Distinguished from other School Finance Cases

The state school finance cases discussed above provide little basis for predicting the outcome of Minnesota's school finance lawsuit. Decisions by other states' courts have no precedential value in Minnesota. What a Minnesota court decides depends largely on the level of scrutiny it applies to the school finance system and how expansive an interpretation it gives to the state education article.

Arguably, the circumstances in the Montana, Kentucky, Texas, and New Jersey cases can be distinguished from the circumstances in Minnesota in at least two important ways. First, in all four cases the disparity in education funding between property poor school districts in which plaintiffs resided and other school districts was considerably greater than is the disparity in education funding between plaintiff school districts and other school districts in Minnesota. Second, in all four cases plaintiffs lived in property poor urban or rural school districts that were unable to finance as much per pupil spending as wealthy districts, even in those instances where residents in property poor districts taxed themselves at significantly higher rates. Currently, many states, including Alaska, Connecticut, Indiana, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Oregon and Tennessee are contending with lawsuits and a possible shift away from property taxes to sales or income taxes or lottery proceeds to finance public schools.

State courts declared school finance formulas constitutional		State courts declared school finance formulas unconstitutional	
State	**Year(s)**	**State**	**Year(s)**
Arizona	1973	New Jersey	1973, 1990
Michigan	1973, 1976, 1984	Kansas	1976
Idaho	1975	Wisconsin	1976
Oregon	1979	California	1977
Pennsylvania	1979, 1987	Connecticut	1977
Ohio	1979	Washington	1978
Georgia	1981	West Virginia	1979, 1988
Colorado	1982	Wyoming	1980
New York	1982, 1987	Arkansas	1983
Maryland	1983	Montana	1989
Connecticut	1985	Kentucky	1989
California	1986	Texas	1989
Oklahoma	1987		
North Carolina	1987		
Louisiana	1987, 1988		
South Carolina	1988		
Wisconsin	1989		